UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

**Hon. Hugh B. Scott**

11CR116S

VICTOR ANGUIERA,
RICARDO ORTIZ-ROSA, et al.,

**Order**

Defendants.

Before the Court is defendant Ricardo Ortiz-Rosa's motion for bond (Docket No. 29). He was charged in a criminal Complaint (Docket No. 1) and, at his initial appearance, the Government's motion for temporary detention was granted (text minute entry, Mar. 18, 2011). Detention hearings were scheduled but not held (see text minute entry Mar. 18, 2011; text minute entry Mar. 21, 2011; text minute entry Mar. 28, 2011). Defendant was indicted on March 31, 2011, with other defendants (Docket No. 9), and defendant was arraigned on April 4, 2011, and detention hearing scheduled for April 26, 2011 (text minute entry Apr. 4, 2011). After the detention hearing on April 26, 2011, this Court ordered (without prejudice) defendant detained as a risk of flight and danger to the community (text minute entry Apr. 26, 2011; Docket No. 22, Tr. of Apr. 26, 2011, at 35-36; see Docket No. 29, Def. Atty. Aff. Ex. A (detention hearing transcript)). On August 11, 2011, defendant moved for release on bond (Docket No. 29). The Government responded (Docket No. 30).

The motion was argued on September 2, 2011, and this Court reserved decision (text minute entry Sept. 2, 2011). This Court found that if defendant was to be released, bond would

have to be more than $10,000 (id.). The Court noted that this motion was pending as of October 31, 2011 (text minute entry Oct. 31, 2011), and scheduled further briefing and continued argument on February 13, 2012 (Docket No. 48, Order of Jan. 25, 2012). On February 13, 2012, a bond hearing was held in which the parties gave proffers regarding defendant's role in the offense and the family's ability to post bond (text minute entry Feb. 13, 2012). Again, this Court reserved decision and noted that, if any bond is allowed, it would have to be greater than $25,000 (id.).

In opposition to this motion, the Government argues that, "pursuant to the Bail Reform Act, a detention hearing may be reopened if the judicial officer determines that information exists 'that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.' 18 U.S.C. § 3142(f)(2)." (Docket No. 30, Gov't Response ¶ 5). Where evidence was available to defendant at the time of the hearing, the hearing will not be reopened (id.), United States v. Dillon, 938 F.2d 1412, 1415 (1st Cir. 1991); United States v. Hare, 873 F.2d 796, 799 (5th Cir. 1989). Here, the Government contends that defendant does not offer any new evidence and only argues that defendant can be better able to defend himself if released to the community (Connecticut) (id.). The Government reaffirms that defendant continues to be a flight risk and poses a risk of danger to the community (id. ¶ 7).

Defendant here has not presented new evidence that was not known at the time of the initial detention hearing. This Court finds that defendant poses a serious flight risk if he is

released and there are no conditions or combination of conditions of release that exist to reasonably assure defendant's appearance or to assure the safety of any other person in the community. Defendant's motion (Docket No. 29) for bond is **denied**.

So Ordered.

/s/ Hugh B. Scott

Honorable Hugh B. Scott
United States Magistrate Judge

Dated: Buffalo, New York
February 29, 2012